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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,948	10/22/2001	Kevin W. Baugh	85700-0051	8213
25231	7590	04/22/2005	EXAMINER	
MARSH, FISCHMANN & BREYFOGLE LLP			SWARTHOUT, BRENT	
3151 SOUTH VAUGHN WAY				
SUITE 411			ART UNIT	PAPER NUMBER
AURORA, CO 80014			2636	

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

CK

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/982,948	BAUGH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brent A Swarthout	2636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 2636

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-13, 23-27 and 30-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S.

Patent No. 6,522,295 in view of Ogrodnik and Gray et al. (980).

a. Ogrodnik discloses a system for tracking airborne objects comprising a receiver subsystem which receives a reference signal from an uncontrolled transmission, such as a television broadcast, receiving scattered signals reflected from flying craft which originated with the television broadcast signal, first processing to find object velocity, and second processing to determine object position so as to track the object for air traffic control purposes (see pages 369-375). Initial target position is derived from signals communicated at the same time reference signals are received.

The first and second processing disclosed by Ogrodnik is functionally equivalent to front-end and back-end processing as set forth in the claims, since the updated position data shown on Fig. 2 corresponding to update

object state data would have been based on speed of object, in order that correct updated position could have been displayed.

Gray teaches desirability in a system of detecting reflected signals from a target of processing digitized transmission replicas of received transmission to determine object state (col. 8, lines 27-35; 41-46).

Ogrodnik and Gray fail to teach that the front-end and back-end processing means are remotely located.

US 6,522,295 (Baugh et al.) teaches desirability in an uncontrolled transmission object location system of having front-end and back-end processing means remotely located (claims 1 and 5).

It would have been obvious to use remotely located front-end and back-end processors in conjunction with a system as disclosed by Ogrodnik and Gray, in order to provide increased modularity of processing means, allowing more individualized processing to take place at desired locations.

3. Claims 14-22, 28 and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,522,295 in view of Ogrodnik, Gray et al. (980) and Strayer.

Baugh, Ogrodnik and Gray teach use of a uncontrolled transmission and scattered transmission object tracking system including remotely located front and back end processing means, except for describing what an air traffic controller would do with the output.

Strayer discloses desirability of using aircraft position data with respect to the aircraft or ground locations, in order to provide alerts to a controller and pilot if aircraft track will intersect with other aircraft, or when an aircraft is too close to another aircraft.

It would have been obvious to utilize output measures as implemented by Strayer in conjunction with an object tracking system as disclosed by Ogrodnik and Gray, in order to be able to warn a pilot of unsafe conditions to allow for quicker response time.

4. Regarding remarks filed with the response on 9-27-04, on pages 9-10 it appears that applicant believes the specification of US Patent No. 6,522,295 has been relied upon to reject the claims. However, this is clearly not the intent of the Office action, as the previous action stipulated that claims 1 and 5 were relied upon for the teaching of remotely located front and back end processing subsystems. As clearly set forth in claim 1, '295 teaches use of both front and back end processing systems, and in claim 5 it is clearly stated that such processing systems are connected by a communication link, which would clearly indicate that the systems are remotely located. It is noted that the claims in the present application have no specific details about how remote the systems are from each other, so having systems remote enough that they would have to be joined by a communication link clearly satisfies the claim language for remote locating.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent A Swarthout whose telephone number is 703-305-4383. The examiner can normally be reached on M-F from 6:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Hofsass, can be reached on 703-305-4717. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Brent A Swarthout  
Examiner  
Art Unit 2636

**BRENT A. SWARTHOUT  
PRIMARY EXAMINER**